

EXHIBIT 7

STATE OF MICHIGAN

54-A JUDICIAL DISTRICT COURT (CITY OF LANSING)

PEOPLE OF THE STATE OF MICHIGAN,

v

File No. 15-04387

PAUL HARCZ,

Defendant.

15-967-FH
Wec

PRELIMINARY EXAMINATION

BEFORE THE HONORABLE LOUISE ALDERSON, DISTRICT JUDGE

Lansing, Michigan - October 16, 2015

Courtroom No. 3

APPEARANCES:

For the People:

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Assistant Prosecuting Attorney
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For the Defendant:

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WITNESSES: DEFENDANT

None

EXHIBITS:

MARKED

RECEIVED

PX#1 - CD of bodycam

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29

1 Lansing, Michigan

2 Tuesday, October 16, 2015

3 At 2:24 p.m.

4 THE COURT: We're on the record in the matter of
5 the State of Michigan versus Paul Harcz, H-a-r-c-z, 15-
6 04387-FY. Today is the date set for preliminary
7 examination in this matter. I've had an opportunity to
8 meet with counsel. I understand there are, like, nine or
9 so bodycam videos of this incident. I have preliminarily
10 told the parties this is a probable cause hearing; not a
11 trial. Each party is to pick out their particular video
12 they want me to see. They only get one each. And I left
13 it to the parties to figure out which ones they use as
14 they think best helps their case.

15 Is that an accurate statement of what took place
16 in chambers, Mr. Koop?

17 MR. KOOP: It is, Your Honor.

18 THE COURT: Okay. Mr. Kamar, you're here for
19 the defendant?

20 MR. KAMAR: Yes, Your Honor.

21 THE COURT: Is that an accurate statement of
22 what took place?

23 MR. KAMAR: It is, Your Honor. And I would just
24 put for the record, and I understand the cumulative court
25 rule, but I think some of these are a little bit

1 different, but I certainly understand the Court's ruling,
2 and I think we're gonna, for today's purposes, although I
3 object, we're gonna use, um, I believe video 15 and 17; is
4 that correct?

5 MR. KOOP: Video 15, which is approximately 24
6 minutes long, Your Honor, and video 19, which is 35
7 seconds long.

8 THE COURT: Okay.

9 MR. KAMAR: And, also, he has agreed to
10 sequester the witnesses, and I have done the same. I've
11 gotten his possible witnesses down the road.

12 THE COURT: I see a sergeant from the State
13 Police here. I assume he's your witness?

14 MR. KOOP: He will be my witness, Your Honor.

15 THE COURT: Who are the people in the back of
16 the courtroom?

17 MR. EAGAN: Paul Eagan, Your Honor, from the
18 Detroit Free Press.

19 THE COURT: Did you submit a document to me, a
20 media request?

21 MR. EAGAN: I thought it was a public courtroom,
22 sir?

23 THE COURT: It is a public courtroom, sir.
24 You're not taking any pictures or anything, are you?

25 MR. EAGAN: No.

1 THE COURT: Okay, you know the drill. You know
2 people come in and they submit a media request. Okay.
3 I'm not trying to keep anybody out. If you're not taking
4 pictures, that's fine.

5 MR. EAGAN: Thanks.

6 MS. SULLIVAN: I'm Terry Sullivan. I
7 transported him down here from Mt. Morris.

8 THE COURT: Okay. And did you transport him on
9 the day in question?

10 MS. SULLIVAN: I transported him, yes, I did,
11 and dropped him off. I was not here at the time of the
12 incident. I dropped him off to the group that he was down
13 here with for the event.

14 THE COURT: Okay. All witnesses or potential
15 witnesses are ordered sequestered.

16 MS. SULLIVAN: I wasn't there--

17 THE COURT: Ma'am, ma'am. I'm sorry, you can
18 have a seat.

19 MS. SULLIVAN: Thank you.

20 THE COURT: Okay. Pursuant to the request of
21 Defense, all witnesses or potential witnesses are ordered
22 sequestered. What about the lady back there?

23 MR. KAMAR: We do not intend on calling her.
24 There's a number of witnesses that we intend on calling,
25 and she's not one of them.

1 THE COURT: Mr. Koop.

2 MR. KOOP: I'd ask for a mutual sequestration.
3 I'm not going to call her, and if Mr. Kamar isn't going to
4 be calling her, I have no problem with her staying in
5 here.

6 THE COURT: She may remain in the courtroom.
7 Just make sure we have her name preserved so at some point
8 if she becomes a witness, if this case survives today, the
9 People would know that she was present in the courtroom
10 and is certainly free to take whatever they choose to do
11 down the road. Anything else?

12 MR. KOOP: Not from the People, Your Honor.
13 Thank you.

14 THE COURT: Call your first witness.

15 MR. KOOP: People call Sergeant Edwin Henriquez.

16 THE COURT: Raise your right hand, please. Do
17 you solemnly swear or affirm the testimony you're about to
18 give in this cause will be the truth, the whole truth, so
19 help you God?

20 MR. HENRIQUEZ: I do.

21 THE COURT: Thank you. Please be seated for a
22 minute. Once you get him settled, I need that court file.
23 We need to put a waiver on from this morning. We're going
24 to call his lawyer up on the phone. Apparently, I looked
25 at the date for the conference and not the arraignment, so

1 my point of reference in that was wrong, so we do need a
2 written waiver.

3 MR. KOOP: That's fine.

4 THE COURT: Or an oral waiver of the 21 day for
5 that, so we're gonna get his lawyer on the phone as soon
6 as I get the file in here. So at some point we're going
7 to interrupt and take care of that, okay. For now we'll
8 let him sit here and get some fresh air.

9 MR. KOOP: That works.

10 THE COURT: Sir, state your name for the record,
11 please, and spell your last name.

12 THE WITNESS: I'm Sergeant Edwin Henriquez.
13 It's spelled H-e-n-r-i-q-u-e-z.

14 THE COURT: Thank you. Mr. Koop.

15 MR. KOOP: Thank you, Your Honor.

16 EDWIN HENRIQUEZ,
17 At 2:28 p.m., called by Mr. Koop and sworn by the Court;
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. KOOP:

21 Q Good afternoon, sir.

22 A Good afternoon, sir.

23 Q Where are you currently employed?

24 A Michigan State Police, Capitol Security.

25 Q In what capacity are you so employed with the State

1 Police?

2 A I'm a sergeant there, sir.

3 Q How long have you been a sergeant with the Capitol
4 security?

5 A Since January of 2015.

6 THE COURT: How long have you been with the
7 State Police?

8 THE WITNESS: Ten years, sir.

9 THE COURT: Thank you.

10 BY MR. KOOP:

11 Q Sergeant, were you duty on or about September 17 of 2015?

12 A Yes.

13 Q And what role were you fulfilling that day?

14 A I was asked to come in to help supervise the event going
15 on that day.

16 Q And what event was going on that day?

17 A Twenty-fifth Anniversary of the American with Disability
18 Act.

19 Q To your knowledge is that a reserved event?

20 A To my knowledge, yes.

21 Q And at some point on September 17th, 2015, did you confront
22 a group of individuals on the Capitol lawn?

23 A Yes.

24 Q And where did that take place?

25 A Around the Austin Blair statute, which is just off of

1 Capitol Avenue. It's on the state property.

2 Q That's the statue right in front, correct.

3 A And tell the Court what occurred at that, I guess for lack
4 of a better word, meeting?

5 Q What occurred at that meeting is we had information--State
6 Police had information that a counter-protest was coming
7 to that event to protest the ADA. This group was
8 identified as that counter-protestors. -I approached them
9 and I told them that while they are more than welcome to
10 be on state property, they can't actually disrupt the
11 event. So we asked them if they were going to protest
12 that can't pass this statute right here.

13 THE COURT: That they couldn't go past the
14 statute?

15 THE WITNESS: That's correct.

16 BY MR. KOOP:

17 Q And was there anything done to prevent this group from
18 going past the statute?

19 A Yes, initially we had about five or six officers just line
20 up in front of them to prevent them. As time went on the
21 group got a little more agitated, so we thought it would
22 be safer to get out metal barricades. So we placed metal
23 barricades in front for everyone's safety.

24 Q Between the officers and this group?

25 A That's correct.

1 Q All right. And at some point did you identify an
2 individual later named Paul Hartz, Jr.?

3 A Yes, I did.

4 Q And if you saw Mr. Hartz--am I saying that correctly, Mr.
5 Kamar? Hartz.

6 MR. KAMAR: That's correct.

7 BY MR. KOOP:

8 Q If you saw Mr. Hartz again, would you be able to identify
9 him?

10 A Yes.

11 Q And do you see him in the courtroom today?

12 A I do. I see him right here.

13 Q And you've identified--can you point to something he's
14 wearing?

15 A Yes, a blue sweater.

16 MR. KOOP: Your Honor, I'd ask that he's
17 identified the defendant.

18 MR. KAMAR: No objection, Your Honor.

19 THE COURT: Without objection for purposes of
20 preliminary examination, the record should reflect the
21 witness has identified the defendant who is seated at the
22 counsel table with a blue, he said sweater, it's actually
23 a blue vest, with a light blue button-down shirt under it.

24 BY MR. KOOP:

25 Q Now, Sergeant, at any point in first coming into contact

1 with the defendant to his ultimate arrest--prior to his
2 ultimate arrest, did anyone either yourself or another
3 member of the Capitol security, State Police identify
4 yourselves as the police?

5 A Yes.

6 Q Was that orally?

7 A Orally, yes.

8 Q And prior to putting up the metal barricade had the
9 defendant tried to break through the, I guess, wall of
10 officers?

11 A Yes.

12 Q How did that occur?

13 A He came with his walking stick, and he was feeling around
14 the officers, hitting them on their legs, hitting between
15 their legs, attempting to go through. At one point I went
16 up to him and told him to stop that because he's hitting
17 my officers and he needs to calm down. At that point he
18 did step back.

19 THE COURT: He did what?

20 THE WITNESS: He did step back after that.

21 BY MR. KOOP:

22 Q And after he stepped back is there more protesting
23 occurring; is there more chanting?

24 A Yes.

25 Q How long does this go on for?

1 A The whole thing last maybe for, just before his arrest,
2 about a half hour.

3 Q And then you said at some point some metal barricades are
4 put up, correct?

5 A Yes.

6 Q And after the metal barricades are put up, is there any
7 further contact from the defendant with officers?

8 A Yes.

9 Q How?

10 A At one point the defendant walked up to the barrier and
11 with his hand felt it and was heard saying he's going to
12 go through. He doesn't care the barrier's there, he's
13 gonna go through.

14 THE COURT: He said that?

15 THE WITNESS: He said that, yes.

16 THE COURT: What did he say?

17 THE WITNESS: I can't state verbatim, but he
18 pretty much said that he's gonna go through this barrier
19 and he doesn't care if he gets arrested.

20 MS. MORRELL: Judge, she can't hear him.

21 THE COURT: What?

22 MS. MORRELL: She can't hear very well.

23 THE COURT: Can't hear who, me or him?

24 MS. MORRELL: Him.

25 THE COURT: You gotta keep your voice up.

1 That's nice you want to turn and look at me, that's fine,
2 but just talk right into the microphone. I can hear you.
3 Okay.

4 THE WITNESS: Yes, sir.

5 THE COURT: So he turned to you and said he was
6 going--words to the effect of going through, didn't care
7 if he got arrested?

8 THE WITNESS: Yes.

9 BY MR. KOOP:

10 Q And did he, in fact, attempt to go through the metal
11 barricades?

12 A Yes.

13 Q And did he get through the metal barricades?

14 A We prevented him from getting through it.

15 Q You prevented him from entering?

16 A Initially, yes.

17 Q Okay. The metal barricades?

18 A Well, like I said, he felt his way with his hands along
19 the railing, and when he got to the end of it, we only had
20 about two barricades up, so when he got to the end of it,
21 he attempted to go around it.

22 Q Okay.

23 A And at that point Officer Brian George tried to physically
24 stop him, stood in front of him and told him not to, you
25 know, you can't go through. And he pushed--tried to put

1 his body--tried to push his way through. When I saw that,
2 I approached to help Officer George to prevent him from
3 going through the barricade. And at the same time I was
4 also asking the defendant to stop it, because he's not
5 gonna get through and we will not allow him to disrupt the
6 event. He insisted on pushing through.

7 Q Okay. And both officers are wearing body cameras at the
8 time, correct?

9 A That's correct.

10 Q And those were subsequently turned over to the
11 prosecutor's office; is that correct?

12 A Correct.

13 Q Okay. And the defendant was ultimately arrested that day?

14 A Yes.

15 Q Okay. Were you instructed by anyone specifically to
16 prevent this defendant or his group from attending the
17 Capitol further than the statute?

18 A Yes, I was.

19 Q Who was that?

20 A My lieutenant, Lieutenant Jason Williams.

21 THE COURT: And what was he doing?

22 THE WITNESS: He was in command of the event.

23 BY MR. KOOP:

24 Q Were you in uniform that day?

25 A Yes.

1 Q Again, you had at least yourself or other officers
2 identified yourselves as State Police?

3 A Yes.

4 Q Orally?

5 A Yes.

6 Q And this all occurred at the Michigan State Capitol, City
7 of Lansing, Ingham County, State of Michigan?

8 A Yes.

9 MR. KOOP: I have nothing further.

10 THE COURT: Mr. Kamar.

11 MR. KAMAR: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. KAMAR:

14 Q Now, Officer, obviously, let's go back to September 17,
15 2015. There was an event there; is that correct?

16 A Yes.

17 Q And that event was for the American with Disabilities; is
18 that correct?

19 A That's correct.

20 Q And there was a number of blind people there; is that
21 correct?

22 A That is correct.

23 Q And there was a number of blind people who were allowed to
24 pass through the barrier, which was I believe the statute
25 of Austin Blair?

1 A That is correct.

2 Q Okay. And you indicated your sergeant indicated to you to
3 stop a certain group?

4 A That's correct.

5 Q How could you identify that group?

6 A Well we identified them as being protestors by the blow
7 horn and the protest signs they were carrying.

8 THE COURT: Well, let me ask you this. Are you
9 talking--let's get some things straight here. So you have
10 an ADA event and you have some people who were visually
11 impaired or blind who are there supporting this
12 anniversary, correct?

13 THE WITNESS: Correct.

14 THE COURT: And I believe you indicated there
15 was--you had gotten word that there was going to be a
16 counter-protest?

17 THE WITNESS: That's correct.

18 THE COURT: So when you speak about the people
19 who are allowed to go through, how do you know they were
20 not counter-protestors?

21 THE WITNESS: These individuals came off a bus
22 that was parked across the street. It was a big marked
23 bus that we saw and they came off the bus.

24 THE COURT: Okay. Now, you gotta just talk into
25 the mike. I won't take it as rude. And keep your voice

1 up.

2 Now, Mr. Kamar is saying how did you identify
3 the protest group. I assume this would be the counter-
4 protest group?

5 THE WITNESS: That's correct.

6 THE COURT: And it's your testimony the
7 defendant was part of the counter-protest group?

8 THE WITNESS: That is correct.

9 THE COURT: And how do you come about that
10 decision--or how did you draw that conclusion?

11 THE WITNESS: He came off the bus that was
12 identified to be carrying the protestors, and when they
13 crossed the street they were carrying protest signs and a
14 bull horn.

15 THE COURT: Well, how did you know this bus was
16 for counter-protestors?

17 THE WITNESS: We had information from Sergeant
18 Held and Lieutenant Jason Williams. They had information
19 from the intelligence division of State Police that a bus,
20 that markings that were on the bus that day would be
21 carrying this group of protestors. So we were expecting
22 them to show up.

23 THE COURT: Go ahead, Mr. Kamar.

24 BY MR. KAMAR:

25 Q Isn't it true you never saw anybody get off that

1 particular bus?

2 A I never saw anyone? No, that's not true I didn't see
3 anyone get off that bus.

4 Q Okay. Isn't it true you never saw Mr. Harcz come off that
5 bus?

6 A I did see him come off that bus.

7 Q All right. Where was the bus located?

8 A The bus was located on Capitol Avenue.

9 Q Capitol facing south?

10 A That's correct.

11 Q And where were you, sir?

12 A I was on Capitol Avenue facing east.

13 Q All right. And they would have, obviously, the bus door
14 would have opened facing east; is that correct?

15 A That's correct.

16 Q Okay. Where were you at that location at that time?

17 A I was on Capitol Avenue facing east.

18 Q All right. And how many people did you see come off the
19 bus?

20 A Maybe ten.

21 Q All right. And what signaled there was something up with
22 these folks was because they had signs and bull horns?

23 A And because of the bus that was marked Freedom Bus, or
24 something to that effect, and that's the bus that said
25 they were going to show up in.

1 THE DEFENDANT: (Inaudible)

2 MR. KAMAR: Okay. Please don't say anything.

3 THE COURT: Mr. Kamar.

4 THE DEFENDANT: I'm sorry. I was coughing.

5 THE COURT: No, sir, you weren't. You were
6 doing a little more than coughing. Okay.

7 THE DEFENDANT: Okay.

8 THE COURT: Knock it off. Thank you.

9 THE DEFENDANT: All right. Sorry.

10 MR. KAMAR: You know all you're doing is ruining
11 my train of thought. Okay.

12 THE DEFENDANT: Sorry.

13 MR. KAMAR: All right.

14 BY MR. KAMAR:

15 Q All right. So a bus by the name of Freedom Bus goes to
16 the State Capitol to protest; is that correct?

17 A That's correct.

18 Q And you never had any information, isn't it true, sir,
19 that these people had any weapons or anything of that
20 nature, correct?

21 A No, no weapons that we knew of.

22 Q No weapons, no explosives; is that correct?

23 A Not to my knowledge.

24 Q And so is it your opinion that it's illegal for people to
25 protest or anti-protest at the Capitol?

1 A Absolutely not.

2 Q All right. And this is a protest for--this is a
3 celebration for the American with Disabilities Act; is
4 that correct?

5 A That is correct.

6 Q All right. And so we have Mr. Harcz, who is, as far as
7 you know, is completely blind; is that correct?

8 A As far as I know, yes.

9 Q All right. And so he is disabled, correct?

10 A Correct.

11 Q And did you have any clue that he was invited to this
12 thing?

13 A I do not have any clue about that, no.

14 Q All right. And isn't it true you never asked him?

15 A No, I did not ask him.

16 Q All right. And, then, isn't it true that he was one of
17 the individuals that helped organize the event?

18 A I'm not aware of that.

19 Q And you didn't ask him that?

20 A No.

21 THE COURT: Mr. Kamar, which event? The
22 celebration or the counter-protest?

23 MR. KAMAR: The celebration itself.

24 THE COURT: All right.

25 BY MR. KAMAR:

1 Q Now, when I saw the video, it appears, and I think the
2 Judge is going to be seeing this one, and Mr. Koop will
3 correct me if I'm wrong, when I saw the video it indicates
4 that a sighted person was handed a brochure from your
5 sergeant; do you recall that?

6 A I do.

7 Q Did you hand that brochure or did somebody else?

8 A Somebody else did.

9 Q All right. And that person is sighted; is that correct?

10 A Yes.

11 Q And isn't it true that brochure was not in braille?

12 A That's correct.

13 Q So you guys gave the rules and regulations to individuals
14 where they could go and where they couldn't go in print,
15 correct?

16 A Correct.

17 Q And not in braille, correct?

18 A Correct.

19 Q All right. And so he goes there, my client, Mr. Harcz
20 goes there, and there is no barricades, correct?

21 A Correct.

22 Q All right. And he has, as far as you know, he has no clue
23 where the Austin Blair statute is, correct?

24 A Correct.

25 Q He can't see it, correct?

1 A Correct.

2 Q And isn't it also true he had no clue the barricades were
3 being put up?

4 MR. KOOP: Objection, speculation.

5 THE COURT: I'm going to sustain the objection.

6 MR. KAMAR: I'll rephrase it.

7 THE COURT: Thank you. When you say he had no
8 clue, I mean he has other senses.

9 MR. KAMAR: Okay. I understand.

10 BY MR. KAMAR:

11 Q Where was he, if you know, when the barricades were put
12 up?

13 A He was standing right in front of us.

14 Q All right. Did you tell him we're putting barricades up?

15 A No.

16 Q Okay. And how close was he to the barricades?

17 A Less than three or four feet.

18 Q All right. And how are they placed out? Are they carried
19 out?

20 A Yes.

21 Q Who carried them out?

22 A We had people who work at the Capitol carry them out.

23 Q So machines don't come and lay them down?

24 A No.

25 Q All right. And then he goes forward with his cane, right?

1 A Not immediately, but yes, he does eventually.

2 Q All right. He goes forward and then you say he felt the
3 barriers?

4 A Yes.

5 Q Okay. And describe the barriers to the Court?

6 A Thin metal barriers, about three feet high, maybe. Four
7 feet at the most.

8 Q Okay. And you observed him feel the top of the barriers?

9 A I did.

10 Q Okay. And did he try--did he feel his way around the
11 barriers?

12 A Yes, he did.

13 Q And let's go back, and I think I skipped this--strike
14 that. I didn't skip that. Did you feel it was illegal
15 for certain people to protest this event?

16 MR. KOOP: I'm gonna object to that; calls for a
17 legal conclusion, Your Honor.

18 MR. KAMAR: Well, I think he's being arrested or
19 stopped for protesting, and I think that's very
20 unconstitutional.

21 MR. KOOP: That's not the charge. He's charged
22 with resisting and obstructing, Your Honor. He's not
23 charged with illegally protesting.

24 THE COURT: What's the question?

25 BY MR. KAMAR:

1 Q Do you think it's improper for somebody to go on the
2 Capitol and protest if they don't like something?

3 A No. It happens all the time.

4 Q Happens all the time?

5 A Uh-huh.

6 THE COURT: That's all right.

7 MR. KAMAR: Let me see if I have anything else,
8 because I think the videos speak for themselves. I don't
9 believe I have anything else, Judge.

10 THE COURT: All right. Any redirect, Mr. Koop?

11 MR. KOOP: No, Your Honor.

12 THE COURT: All right. Thank you.

13 MR. KOOP: But we will have the video.

14 THE COURT: Right. Officer, you may step down,
15 but I'm going to ask that you stay in the courtroom in
16 case we need you for the video. Actually, sir, have a
17 seat. I have a couple questions for you.

18 THE WITNESS: Yes, sir.

19 THE COURT: These metal barriers or barricades
20 that you put up.

21 THE WITNESS: Yes.

22 THE COURT: Do they just cover the sidewalk in
23 front of the Blair statute or do they extend the entire
24 front of the State Capitol?

25 THE WITNESS: Just on the sidewalk.

1 THE COURT: The bus with the counter-protestors
2 that you said the defendant got off of, it was parked on
3 Capitol Avenue?

4 THE WITNESS: Yes.

5 THE COURT: Capitol Avenue runs from Ottawa
6 Street to Allegan. It's about two or three blocks along
7 Capitol Avenue. The bus that the counter-protestors got
8 off, that you say include the defendant, where on Capitol
9 was that?

10 THE WITNESS: Just off Michigan.

11 THE COURT: So the bus is actually parked on
12 Michigan?

13 THE WITNESS: No. It's parked on Capitol just
14 before the intersection of Michigan Avenue.

15 THE COURT: Okay, so it would have been--

16 THE WITNESS: Just in front of the courthouse,
17 actually.

18 THE COURT: So it would have been north of--it
19 was parked pretty much right there out in front of City
20 Hall?

21 THE WITNESS: That's correct?

22 THE COURT: Towards the corner?

23 THE WITNESS: Yes.

24 THE COURT: What about the bus with the
25 celebrants or the people who were there to celebrate the

1 anniversary of the ADA; where was that bus parked on
2 Michigan?

3 THE WITNESS: There were not a lot of buses, but
4 the participants, they came on their own, most of them.
5 There was one bus parked, I think, on Ottawa. It was for
6 the equipment, everything brought up.

7 THE COURT: The bus that the defendant got off
8 of, did it have a sign or something identifying--how did
9 you know that was the bus or was going to be the bus with
10 the counter-protestors on it?

11 THE WITNESS: I was informed by my lieutenant.

12 THE COURT: Yeah, but you know, it didn't have a
13 sign on it, did it?

14 THE WITNESS: It actually did. It had graphics
15 on the whole bus.

16 THE COURT: And what did it say?

17 THE WITNESS: Something Freedom Bus or Freedom
18 Riders, something to that effect. I couldn't tell you
19 exactly what it said.

20 THE COURT: All right. Any other questions of
21 the witness, Mr. Koop, as it relates solely to my
22 questions.

23 REDIRECT EXAMINATION

24 BY MR. KOOP:

25 Q Besides there just being a bus arriving, was there further

1 intelligence about this group?

2 A Yes.

3 Q That they would be coming to this event?

4 A Yes.

5 Q Was there intelligence that the event organizers did not
6 want this group to disrupt the event?

7 A Yes.

8 Q So it wasn't just a bus you were looking for; is that
9 fair?

10 A Yes.

11 MR. KOOP: Nothing further, Your Honor. Thank
12 you.

13 MR. KAMAR: Just one question based upon your
14 question.

15 THE COURT: Go ahead, Mr. Kamar.

16 MR. KAMAR: Thank you.

17 RECROSS-EXAMINATION

18 BY MR. KAMAR:

19 Q Isn't it true that there really was no counter-protestors
20 at this event?

21 A No counter-protestors?

22 Q Yes.

23 A The defendant's group was protesting, yes, there was.

24 Q Because you wouldn't let them in, correct?

25 A They were still protesting. They were close enough to the

1 event to be able to be heard.

2 Q They said let us in, correct?

3 A That's what they said, yes.

4 Q That's the only protest that you heard, correct?

5 A They were protesting, yes.

6 Q Yeah, because you wouldn't let them in; is that correct?

7 A I don't what they were protesting for, sir.

8 MR. KAMAR: Nothing further, Your Honor.

9 THE COURT: All right. You may step down.

10 We're gonna take a moment here and get Mr. Silverthorn.

11 (At 2:51 p.m., off the record)

12 (People's Exhibit Number 1 marked for
13 identification)

14 (At 2:58 p.m., back on the record)

15 THE COURT: All right, we're back on the record
16 in the matter of the State of Michigan versus Paul Harcz.
17 Mr. Koop, do you have another witness or are we going to
18 look at the video?

19 MR. KOOP: No other witnesses, and we would move
20 for People's Exhibit 1, which is 15 and 19 contained on a
21 disc.

22 THE COURT: Is this TV on?

23 MR. KAMAR: And there's a stipulation, Your
24 Honor.

25 THE COURT: Is this off? Is this the long or

1 the short one?

2 MR. KOOP: This is the long one.

3 THE COURT: All right, a 24 minute video. By
4 stipulation, it's admitted.

5 Okay. We'll stay on the record because I might
6 have a question, but I'm gonna come down so I can see it
7 better.

8 (At 3:01 p.m., video begins)

9 (At 3:01 p.m., video stops)

10 THE COURT: I guess it's good we stayed on.
11 Just for identification purposes so I'm clear, there's an
12 officer in what appears to be a State Police uniform, with
13 a shadow it looks like he may have sergeant stripes, but
14 he's got on a fluorescent colored vest. Would this be
15 Sergeant Rodriguez?

16 MR. KOOP: Henriquez?

17 THE COURT: Henriquez, I'm sorry.

18 MR. KOOP: Yes.

19 THE COURT: Okay. We have a female here with
20 glasses who's cut off, I can't see her, and we have a
21 gentleman that—

22 MR. KAMAR: That's Mr. Harcz.

23 THE COURT: Excuse me. In a ball cap with a
24 beard and has what appears to be a walking stick of some
25 type with him; would that be the defendant?

1 MR. KAMAR: Yes, sir.

2 THE COURT: All right. Just so I know who I'm
3 looking at. All right.

4 (At 3:02 p.m., video begins)

5 (At 3:03 p.m., video stops)

6 THE COURT: Now, the second officer who appears
7 to be a larger framed white male, it was a sergeant with
8 glasses, who is this person here?

9 THE WITNESS: Sergeant Jeff Held.

10 THE COURT: Sergeant—

11 THE WITNESS: Held.

12 MR. KOOP: H-e-l-d.

13 THE COURT: Held. H-e-l-d. Thank you. He is
14 talking to the female that the defendant is with. The
15 defendant would appear to be on her right. Go ahead.

16 MR. KOOP: I think, for clarification, the
17 gentleman in the back was a potential witness that was
18 sequestered prior to the proceeding.

19 MR. KAMAR: That's the correct. The gentleman
20 had been sitting in here all day.

21 THE COURT: And so we're clear, when I asked
22 about the other sergeant who was there, there's no fence
23 up at this time or barricade; the parties have walked up
24 as Sergeant Henriquez has testified, and we are at mark
25 10:59:54 a.m. Go ahead.

1 (At 3:04 p.m., video resumes)

2 (At 3:05 p.m., video stops)

3 THE COURT: We're at 11:00:58. A few seconds
4 before that defendant is seen chanting and raising his
5 right fist. I can't make out what he's saying.

6 MR. KOOP: No braille, go to jail, you can't
7 stop us.

8 THE COURT: Do you agree, Mr. Kamar?

9 MR. KAMAR: It says that during the course of
10 these. I wouldn't disagree with that opinion.

11 THE COURT: Okay. Thank you. Go ahead.

12 (At 3:05 p.m., video resumes)

13 MR. KOOP: Do you want me to pause it, Judge?

14 THE COURT: No, I was telling you not to turn it
15 up much louder.

16 MR. KOOP: Gotcha.

17 THE COURT: Back that up about 30 seconds,
18 please.

19 (At 3:20 p.m., rewinds video; resumes video)

20 (At 3:30 p.m., video stops)

21 MR. KOOP: At this point he's already been
22 arrested. I'd like to play video 19, which is the 24
23 second clip.

24 THE COURT: This was which video?

25 MR. KOOP: This is video 15, body camera 15.

1 THE COURT: Body camera 15 that we watched for
2 approximately 24 minutes. All right. Now, we're going to
3 get to body camera 16?

4 MR. KOOP: Nineteen, Your Honor.

5 THE COURT: Nineteen. All right.

6 (At 3:31 p.m., video begins)

7 (At 3:32 p.m., video stops)

8 THE COURT: All right. Sergeant, can you take
9 the stand, please. You may be seated. You remain under
10 oath. In the last video, I believe video 19.

11 THE WITNESS: Yes.

12 THE COURT: As it would appear, all I saw were
13 shadows, but it would appear the defendant was being led
14 away by two officers?

15 THE WITNESS: That's correct.

16 THE COURT: What I observed, and there was some
17 fencing, not just barricades, but it looks like six-foot
18 fencing or eight-foot fencing was placed around the
19 Capitol?

20 THE WITNESS: That's right, sir, that's because-
21 -I'm sorry.

22 THE COURT: Go ahead.

23 THE WITNESS: That's because the Capitol is
24 under construction now, so that was construction fence.

25 THE COURT: So the organizers of the event, were

1 they inside of this construction fencing up by the steps
2 or were they outside of it?

3 THE WITNESS: They were on the outside, sir.

4 THE COURT: Okay. So they would have basically,
5 if I'm speaking there, my back would have been to the
6 construction fencing?

7 THE WITNESS: That's correct.

8 THE COURT: And then were there people there,
9 I'm gonna say for lack of a better term, supporting this,
10 they would have been facing this fencing?

11 THE COURT: That is correct.

12 THE COURT: So the barricade, then, that was
13 constructed along the sidewalk would have been to separate
14 the defendant's group at the Blair statute from the group
15 that was up by the fencing?

16 THE WITNESS: That is correct.

17 THE COURT: So that would have been the distance
18 of approximately how many feet from the Blair statute to
19 where the barricades you put up to the construction
20 fencing?

21 THE WITNESS: I think that the report actually
22 says how many feet. Do you want me--

23 THE COURT: I'm sorry?

24 THE WITNESS: I think the report says--because
25 we measured it, and the report says, I think it was 30 or

1 40 feet away, maybe.

2 THE COURT: All right. Mr. Koop, any further
3 questions now that we reviewed the video? And I'll give
4 you an opportunity also, Mr. Kamar.

5 MR. KOOP: Your Honor, was your question where
6 were the protestors stopped from entering from where the
7 event speakers were in distance?

8 THE COURT: No. I just wanted to know from the
9 barricade to the construction fencing.

10 MR. KOOP: Okay. Not from the barrier to the
11 protestors?

12 THE COURT: Now, I thought I understood what I
13 asked. Now, you've managed to confuse me.

14 MR. KOOP: Fair enough.

15 THE COURT: All right. As I come down the steps
16 of the Capitol, there's construction fencing?

17 THE WITNESS: Yes, sir.

18 THE COURT: On the outside of it to where the
19 protestors were, what kind of distance are we talking?

20 THE WITNESS: About 30 or 40 feet.

21 THE COURT: Okay. I thought I had it right. Go
22 ahead, Mr. Koop.

23 MR. KOOP: I think I'm correct now, Your Honor.
24 I was wrong. I think I understand Your Honor now.

25 THE COURT: Yeah, repeat that one more time.

1 MR. KOOP: I got it. I think it's clear on the
2 record.

3 THE COURT: Wrong was the word you used. Thank
4 you.

5 MR. KOOP: Nothing further, Your Honor. Thank
6 you.

7 THE COURT: Anything, Mr. Kamar?

8 MR. KAMAR: No, sir.

9 THE COURT: All right. Thank you. Sir, you may
10 step down.

11 (At 3:36 p.m., witness excused)

12 THE COURT: Any other witnesses, Mr. Koop?

13 MR. KOOP: Not for the People, Your Honor.

14 THE COURT: Mr. Kamar?

15 MR. KAMAR: No proofs at this time.

16 THE COURT: Mr. Koop.

17 MR. KOOP: Thank you, Judge. Your Honor, the
18 People would ask Your Honor to bind the defendant over as
19 charged. We've heard testimony that the defendant did
20 assault, batter, wound, restrict, obstruct or oppose
21 officers at the State Capitol, including Sergeant Edwin
22 Henriquez. That they were officers of the Michigan State
23 Police, Capitol security, and the defendant knew or had
24 reason to know they were performing their duties.

25 Now, it is a unique case, but based on the

1 initial interaction with police, when the police identify
2 themselves, first the defendant confronts the police when
3 there is not a metal barrier. So at this point he knows
4 or has been informed that there is--

5 THE COURT: I saw the video, Mr. Koop.

6 MR. KOOP: Fair enough. I think most
7 importantly or most telling is that the--after the metal
8 barrier is in place his counterpart identifies that
9 there's a bunch of barricades they put up. Defendant
10 says, "You can't stop me." He begins to advance forward.
11 And even at one point says, "I can do what I want to do.
12 I can do what I want to do." And that's when officer--at
13 some point in there Officer Henriquez puts his hands on
14 the defendant and says you cannot be disruptive and he's
15 taken into custody. In fact, after he--as stated in video
16 19, defendant states himself, "I'm trying to get around
17 your phony barricade. F-you."

18 I think the evidence supports at a prelim
19 standard probable cause that this defendant did commit
20 this crime and it occurred on or about September 17, 2015,
21 at the Michigan State Capitol, City of Lansing, Ingham
22 County, State of Michigan. Thank you.

23 THE COURT: Mr. Kamar.

24 MR. KAMAR: Your Honor, I look at the statute
25 and the felony complaint. I never saw an assault. I

1 think the officer testified he may have while tapping his
2 cane hit somebody on the foot. To me that's not
3 intentional assault. That's an accidental touching. I
4 never saw one batter. I never saw one wound. I didn't
5 see any resistance. He walked up, are you the officers,
6 you the off--he never got a response. I never saw any
7 obstruction, opposition, or especially endangering of any
8 of these officers. And I think the only one, obviously,
9 well, I won't go there because we stipulated to the
10 report. This is no felony, as far as I'm concerned, Your
11 Honor, and I don't think it should be bound over as the
12 same. You know, maybe keep it as a misdemeanor. I could
13 see maybe some sort of disorderly or something like that,
14 but to have this as a felony for what this gentleman did,
15 I mean, he's with the ADA, he's invited there, he goes
16 there, they're not let in. At the State Capitol we don't
17 let citizens in? And he gets upset. Now, yelling is not
18 resisting and obstructing, so I don't think the evidence
19 is there. Thank you.

20 THE COURT: Thank you. Anything else, Mr. Koop?

21 MR. KOOP: No, Your Honor. Thank you.

22 THE COURT: All right. The Court's listened to
23 the testimony of Sergeant Edwin Henriquez. I viewed the
24 video. The testimony is pretty simply here. There was
25 some type of celebration at the State Capitol, the 25th

1 Anniversary of the Americans with Disabilities Act. It
2 would appear these people obtained proper permits to have
3 that celebration there at the Capitol. Everybody knows
4 you gotta have a permit, so there's nothing here saying
5 they didn't have a permit. The officers were there to
6 keep the peace. Officer Henriquez testified that they
7 received information that a counter-protest group was
8 coming, and they stepped off of a bus that was identified
9 or at least told to them to be the counter-protestors.
10 Now, they came to the Capitol, they came, which certainly
11 is their right to do. They certainly have a right to
12 counter-protest if they choose. The Court notes they were
13 not kept off the Capitol ground. The Court notes
14 apparently what was going on here is the officers were
15 trying to maintain a buffer between one group and what
16 they perceived to be an opposing group. That's no
17 different than when the Ku Klux Klan comes to the State
18 Capitol, which they have obtained permits to do. Fencing
19 is put up. You don't let a group of African Americans
20 come in there and intermingle with them. That's going to
21 be danger, and everybody knows that. These folks also
22 have a right, if, in fact, they were a counter-protest
23 group, and I'll be honest, initially it was kinda hard to
24 tell. I couldn't tell if they were a counter-protest
25 group, but it became apparent that that's just what they

1 were as this event went on, as the video played. They
2 want to get past the police officer. There was a female
3 in the group who was trying to get information from
4 Officer Henriquez about what was going on, why they
5 couldn't get in, trying to obtain this information. This
6 defendant was seen vehemently asserting his rights.
7 Yelling about not violating them, but it was not because
8 he was denied access to the Capitol grounds. It was
9 because he could not get into an area on the grounds where
10 he wanted to be for his counter-protest. That's pretty
11 simple to me. That's what this kinda boils down to. So
12 we're clear, nobody told them to leave the Capitol
13 grounds. Nobody told them they couldn't be on the Capitol
14 grounds. Okay. They were simply attempting to keep with
15 the group they thought were to be counter-protestors,
16 which it turned out to be. And I would indicate, I mean,
17 you know, you can vociferously state your point even to
18 the extent this defendant was seen and heard using the F-
19 word several times, including screw you, as well. It
20 became apparent that they were counter-protestors because
21 even during the singing of the National Anthem, they were
22 disruptive, they were yelling, they were chanting. I was
23 straining at times, such that, it was probably from where
24 the officers were that at times I couldn't hear the
25 National Anthem, but I was able to pick up words for it,

1 so I know that's what was being said, because the one
2 female said, "their damn flag ceremony," as I recall the
3 words she said. So it became apparent, and the Court's
4 convinced for purposes of this examination that this group
5 was a counter-protest group, but, again, that's not to be
6 held against them, because they have every right to be on
7 the Capitol and to make their views known. If they want
8 to support ADA, they can do it. If they have an issue
9 with the ADA Act and want to be heard, they have the right
10 to do that. However, what they do not have the right to
11 do is to disobey what would appear to be lawful commands
12 of a police officer. No more than people protesting in
13 Baltimore about somebody that got shot. They had no right
14 to burn up a Walgreens. They have no right to engage in
15 the conduct they did in Baltimore, and I don't believe
16 they have the right here to disrupt and disobey, and
17 excuse my language, but apparently hell bent on disobeying
18 the lawful commands of these officers, which was
19 basically, again, stay in this area. They were having no
20 problem having their voices heard, but simply to be in
21 this particular location when you're doing it. And this
22 is apparently what they were taking umbrage to.

23 The statute under which he is charged, MCL
24 750.81d(1), the defendant is charged with the crime of
25 assaulting, battering, wounding, resisting, obstructing,

1 opposing, endangering, in this case, a State Police
2 officer who was performing his duties. Let's stop there.
3 There's no question Sergeant Henriquez and his--Brian
4 George and the other officer were performing their duties
5 at the Capitol on the date in question, September 17th,
6 2015. That's what they were doing. There's no assertion
7 here that the defendant did not know they were police
8 officers because he, in effect, asked and was told they
9 were, in fact, police officers. So he knew that. There's
10 no question about that. He knew they were police
11 officers. He was--can be seen in the video listening to
12 parts of the conversation going on between the female and
13 I believe Sergeant Henriquez. I keep saying Henrique
14 (phonetic), Henriquez, which one is it?

15 MR. HENRIQUEZ: The Z is not silent, sir.

16 THE COURT: Okay, very good. With Sergeant
17 Henriquez. Close?

18 MR. HENRIQUEZ: Yes, sir.

19 THE COURT: I gotta work on my Spanish. Okay.
20 So they knew. So that satisfies that portion of it.
21 Obstruct includes the use of--the use or threatened use of
22 physical interference or force or a knowing failure to
23 comply with a lawful command. And that's what we have
24 here. He obstructed the officers by failure to comply
25 with a lawful command. It's right out of the jury

1 instructions for this particular charge here. They were
2 asked to stay in a particular area. The officers
3 apparently thought that they were going to be, perhaps,
4 disruptive and they decided to erect a barrier, a metal
5 barricade. You could hear it as he was tapping on it,
6 that it was a metal barricade, because the officer
7 testified across the sidewalk. Again, they're not trying
8 to keep him off the Capitol. Nowhere in the video were
9 they told you can't be on the Capitol grounds. They chose
10 to be in an area that they were being kept from to
11 maintain peace and order. I find that's what the officers
12 were doing. That's what's in their duty.

13 Second, the defendant knew or had reason to know
14 that the person in this case, Sergeant Henriquez, Officer
15 George, and Officer Davis were police officers. He knew
16 that. He asked and was told that. He had no reason to
17 believe they weren't.

18 Now, while there was no bodily injury, he did
19 disregard--it's a lawful command I find at this stage of
20 the proceedings.

21 This is a preliminary examination. The primary
22 function of a preliminary examination is to determine if a
23 crime has been committed and whether or not there is
24 probable cause to believe this defendant committed the
25 offense. From *People versus Glass*, after remand, 464

1 Michigan 266, a 2001 case. The Court will also cite
2 *People v. Redden*, 290 Mich App 65, a 2010 case. The
3 prosecutor doesn't have to prove each element beyond a
4 reasonable doubt, but he has to present some evidence on
5 each element, and, again, that's by a probable cause
6 standard. Now, one could look at this and say, well, you
7 know, they were asserting their rights, and whether or
8 not, I mean, I heard him say that they were invited. I
9 don't know who they were invited by. There's no evidence
10 of who they were invited by, but even if I were to assume
11 they were invited, we have here, Counsel, something that
12 is left for a jury to determine. If they think they were
13 lawfully invited to be there to be a part of the
14 celebration, then it's a jury question. If that's the
15 argument, there's equally enough evidence to show they
16 were there to counter-protest and the officers were
17 engaging in a safety function, to secure the grounds of
18 the Capitol and the participants involved, and certainly a
19 jury could find that. But at this point, based on the
20 evidence I've heard, the testimony I've heard and the
21 evidence I've seen, it would appear that probable cause
22 exists to believe this defendant resisted or obstructed a
23 police officer. He's not following their command. And I
24 can take it a step further. It's almost as if he wanted
25 to be in the position that he found himself in.

1 The defendant is bound over to the Ingham County
2 Circuit Court for further proceedings in this matter. The
3 bindover date is set for October 28th at a time and
4 location to be determined by the circuit court.

5 Mr. Kamar, if your client is going to sign a
6 written waiver of that arraignment--

7 MR. KAMAR: We already have, Your Honor.

8 THE COURT: Very good. We will include this in
9 the bindover, or in the file with the bindover for the
10 circuit court.

11 Mr. Harcz, basically what the waiver means, and
12 I'm sure your attorney has told you, you don't have to be
13 in court on October 28th. This waiver that you signed will
14 take the place of your physical appearance; a not guilty
15 plea will be entered for you at that time. For all
16 further proceedings in this matter, your attorney will be
17 notified. I would say to you if you change any of your
18 contact information, phone or address, let Mr. Kamar know
19 so that he can reach you. As long as he can reach you and
20 get you to Court when you need to be there, then you don't
21 have to worry about your bond being revoked. Okay.

22 Anything further in the matter?

23 MR. KOOP: Nothing for the People, Your Honor.

24 MR. KAMAR: No, thank you, sir.

25 THE COURT: All right. Very good. I'm going to

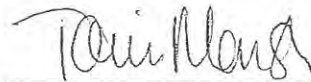
1 return those exhibits to the People. That's all for the
2 record.

3 (At 3:51 p.m., off the record)
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COUNTY OF INGHAM)
)
STATE OF MICHIGAN)

I certify that this transcript, consisting of 46 pages, is a complete, true, and correct record of the proceedings and testimony taken in this case on October 16, 2015.

December 9, 2015



Tami J. Marsh, CER 5271
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